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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,809	12/05/2003	Daniel L. Shepherd	8029-A-1	1938
7590 03/17/2009				
Jordan M. Meschkow Meschkow & Gresham, PLC Suite 409 5727 North 7th Street Phoenix, AZ 85014			EXAMINER BRADFORD, CANDACE L	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 03/17/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/729,809

Applicant(s)

SHEPHERD ET AL.

Examiner

CANDACE L. BRADFORD

Art Unit

3634

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5 and 11-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5 and 11-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant argues that examiner made the action mailed 10/30/08 a "Final Action" prematurely, arguing the examiner failed to reasonably expect, and thus address, the changes made by the amendment after the non-final action. The examiner has reviewed the applicant's arguments and agrees that finality was improper. The finality of the Office Action mailed on 10/30/08 is deemed improper and has been withdrawn, and the 2nd action, mailed 10/30/2008, is now considered a non-final action. However the references used in the 2nd non-final action still read on the claims, therefore, the rejection below has been made.

Claim Rejections - 35 USC § 102

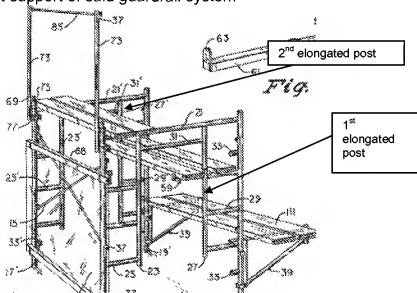
The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

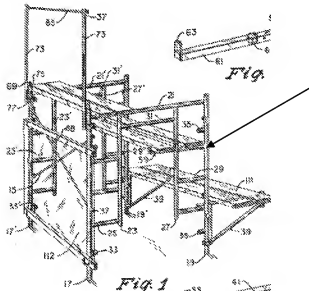
Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses an access brace for a scaffold, said scaffold including a pair of bearers 59, a platform 111, supported by said pair of bearers, as best seen in Figure 1, and a guardrail system 21, for surrounding said platform, said access brace comprising, an elongate member 61 having a first and second end, first and second engaging means 67,63 coupled to said second end, said first and second engaging means being configured to engage with said pair of bearers; a first post, as best seen in attached figure extending from an intermediate portion of said elongate member, said

first post being located at a first distance from said first end of said elongate member;
and a second post, as best seen in attached figure extending from said intermediate
portion of said elongate member, said second post being located at a second distance
from said first end of said elongate member, said second distance being greater than
said first distance, and said first and second posts being configured to couple with an
upright support of said guardrail system



Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses an access brace for a scaffold, said scaffold including a pair of bearers 59, a platform/support 111, supported by said pair of bearers, and a guardrail system 21 for surrounding said platform, said access brace comprising a first elongate member having a first and second end, first and second engaging means 67,63 coupled to said first and second end respectively, said first and second engaging means being configured to engage with said pair of bearers; and a post, extending from an intermediate portion of said first elongate member, said post being configured to

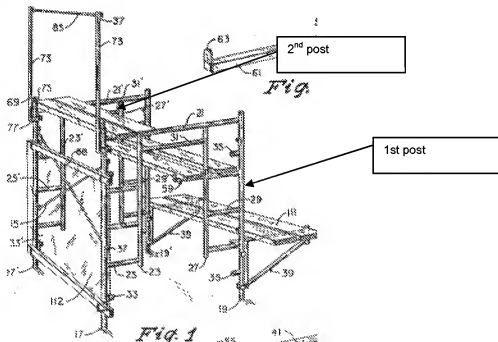
couple with an upright support of said guardrail system; a second elongate member arranged substantially parallel to said first elongate member; and a support 111 extending between said first and second elongate members for retaining said first and second elongate members in spaced relation, said support being arranged substantially perpendicular to said first and second elongate members and aligned with said post, as best seen in Figure 1.



Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold comprising a frame arrangement including a first and second bearer 29, extending between a first and second pair of vertical posts, a platform 111, supported by said first and second bearers 41, an access brace including an elongate member 45, having a first end and a second end, a first end hook 53, coupled to said first end and engaged with said first bearer, a second end hook 49, coupled to said second end and engaged with said second bearer 29, and a post 51, extending from an intermediate portion of said elongate member, said post being

located a predetermined distance from said first end; and a guardrail system 21, surrounding said platform, said guardrail system including an upright support coupled with said post, and said predetermined distance defining an opening in said guardrail system for access to said platform.

Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said post is a first post, said predetermined distance is a first distance, and said access brace further includes a second post extending from said intermediate portion of said elongate member, said second post being located at a second distance from said first end of said elongate member, said second distance being greater than said first distance, and said upright support is selectively coupled to one of said first and second posts.



Claim 14 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said upright support of said guardrail system 21, is a tubular member 77, exhibiting an inner diameter, and said post exhibits an outer diameter that is smaller than said inner diameter such that said post fits within said tubular member.

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 12 wherein said elongate member 61, is a first elongate member, and said access brace further comprises a second elongate member 61, arranged substantially parallel to said first elongate member; and a support extending between said first and second elongate members for retaining said first and second elongate members in spaced relation.

Claim 16 is rejected under 35 U.S.C. 102(b) as being anticipated by Gethmann (3392801). Gethmann discloses a scaffold as claimed in claim 16 wherein said access brace further comprises a bracket coupled to said second elongate member and attached 55, to one of said vertical posts.

Response to Arguments

Applicant's arguments filed 1/30/09 have been fully considered but they are not persuasive. The applicant's attention is drawn to page 9 of the remarks. The applicant states that elements 21,21' are not a guard rail system. The examiner would like to state that elements 21,21' are guard rails with surround the platform on opposed sides. Also no contradictory definition was provided. The applicant states that the office action was to cite passage associated with an elongated member having first and second

ends. Reference numbers are now provided to show the elongated member 61, having first and second ends as best seen in Figure 2. The applicant's attention is drawn to page 11 of the remarks. The applicant states the sleeve member 67 is not coupled to the first end to any structure. The examiner would like to point out that as best seen in Figure 1, the sleeve member clearly engages member 29 of the device. The examiner would like to note that welding can be interpreted as coupled/engaged. The applicant's attention is drawn to page 12 of the remarks. The applicant claims the Gethmann reference does not teach first and second post as claimed. The examiner would like to point out that the post have now been clearly shown in attached figure above and as claimed, read upon the invention. The applicant states the stub of Gethmann in no way couple with the guard post. The examiner would like to point out that as best seen in Figure 1, the guard post clearly couple with stub 29. The applicant attention is drawn to page 13 of the remarks. The applicant states the Gethmann reference does not have a part to part relationship as set forth in claim 5. The examiner has clearly defined each claimed feature, as advanced above. The applicant's attention is drawn to page 14. The applicant states the Gethmann reference teaches a guard rail arranged on only one side of the top scaffold. The examiner would like to state that as claimed the Gethmann reference clearly disclose a guard rail system with that surrounds the platform. The applicant attention is drawn to page 15 of the remarks. The applicant states that there is a lack of consistency in the reference numbers that are common in the independent claim. The examiner apologizes for the typographical error, corrections have been made above, so that there is now consistency between the reference numerals.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CANDACE L. BRADFORD whose telephone number is (571)272-8967. The examiner can normally be reached on 9am until 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
Supervisory Patent Examiner, Art
Unit 3634

Candace L. Bradford
Patent Examiner
Art Unit 3634
March 16, 2009